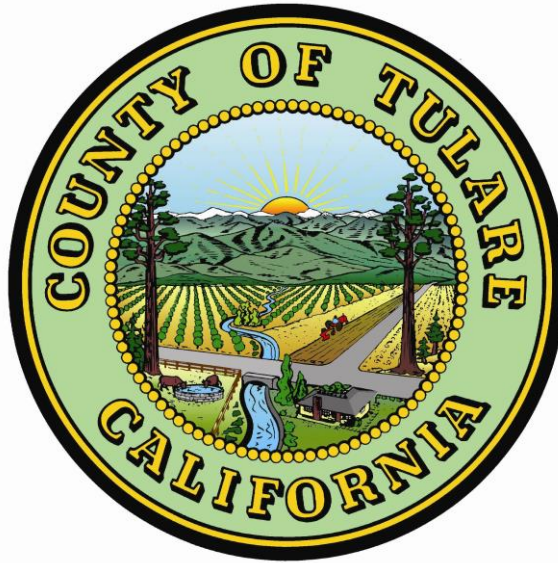


REQUEST FOR STATEMENT OF QUALIFICATIONS



ENGINEERING CONSULTANT SERVICES

FOR

TRAVER FORCE MAIN SEWER AND LIFT STATION AND WASTEWATER TREATMENT FACILITY IMPROVEMENTS

AUGUST 2015

**SUBMITTALS DUE SEPTEMBER 17, 2015 BY 5:00 PM
RFQ CONFERENCE SEPTEMBER 3, 2015 AT 4:00 PM**

ISSUED BY:

Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277-93274

This RFQ and enclosures and relevant project information are available at the County of Tulare website at: <http://www.tularecounty.ca.gov/rma/index.cfm/public-works/public-works-projects/request-for-proposals-for-engineering-services/>

REQUEST FOR QUALIFICATIONS

I. PURPOSE

Tulare County has recently received a Community Development Block Grant (“CDBG”) from the California Department of Housing and Community Development with additional funds provided by the County general fund. These funds are to be used for the design and construction of a new force main sanitary sewer and lift station to convey wastewater from Traver, an unincorporated community in northwest Tulare County, to the nearby County-owned wastewater treatment facility (“WWTF”) located on Road 44 between Road 360 and Road 368. The County is seeking statements of qualifications from professional engineering consultants to complete the design of the force main sewer and lift station, design improvements to the WWTF, and provide construction engineering support for this project. The project will be federally funded through the CDBG and all work must comply with State and Federal requirements. A copy of the grant agreement is available on the County’s website for this RFQ, available at <http://www.tularecounty.ca.gov/rma/index.cfm/public-works/public-works-projects/request-for-proposals-for-engineering-services/>, which further describes some of the applicable requirements for work conducted under this grant. Note that the grant agreement includes funding for other projects in addition to the project which is the subject of this RFQ.

II. PROJECT DESCRIPTIONS

A new force main sewer is to be constructed which would extend east from a new lift station on Merritt Drive to Road 44 then south on Road 44 to the WWTF. This force main is to be constructed within the right of way on Merritt Drive and the right of way on Road 44. The design of the force main alignment must take into consideration the existing utilities, including gas, water, and sewer mains, and any other encroachments within the rights of way. The lift station, which is assumed at this time to be a triplex influent pump station, and force main, which is assumed at this time to be a 6” diameter, are to be appropriately sized to receive the wastewater from both the area zoned for residential development located North of Jacobs Drive between Canal Drive and Burke Drive and from the commercial areas in Traver located between Burke Drive and State Route 99. The design of the lift station must take into consideration any existing flood plains and any other relevant environmental features of the site.

For additional information regarding flow and improvements, refer to the 2005 Traver Redevelopment Project Sewer Collection and Wastewater Treatment Study and the 2014 Traver Community Sewer Collection and Wastewater Treatment Evaluation, which will be made available on the Tulare County Resource Management Agency’s website for this RFQ, for which the address is provided above.

The selected consultant may be required to fill out or to help the County or others fill out certain forms as part of this project, which may include those forms for CDBG grants, available at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/formsreports.html>.

III. SCOPE OF WORK

Required services include, but are not limited to the Tasks described in this Section.

Task 1: Pre-Design

- Evaluate the Need for Capacity in Accordance with the Traver Community Plan 2014 Update, available at: <http://www.tularecounty.ca.gov/rma/index.cfm/documents-and-forms/planning-documents/countywide-planning/traver-community-plan-2014-update/>
- Collect and Verify Data on Underground Utilities and Structures
- Coordinate any Surveying, Geotechnical Investigation, or Field Inspections with the County, as necessary
- Evaluate Potential Sites for the Lift Station
- Assist the County with Acquiring the Lift Station Site, as necessary
- Balance Operational Costs with Capital Costs
- Prepare a Draft Memorandum of Design for County Review and Approval
- Prepare a Final Memorandum of Design
- Assist the County with Environmental Permitting or Compliance, as necessary
- Identify and Assist the County with Any Right-of-Way Permitting
- Design the Lift Station, including Selecting the Pumps and Sizing the Wet Well
- Evaluate the Sizing and Material Selection for Force Main
- Developing Cost Estimates
- Evaluate the Existing WWTF's Capacity and Assess whether Upgrades Will Be Required

Task 2: Design Development

Consultant shall refine the concept plan, develop preliminary design details, make preliminary product selection, and prepare a preliminary opinion of probable cost of construction. This step may include, but is not necessarily limited to, the following:

- Selection of the Size and Material for the Force Main Sewer
- Design the Alignment of the Sewer
- Locate and Size the Wet Well
- Select Lift Station Pump(s)
- Developing Cost Estimates and Schedule
- Design Improvements and Structures for WWTF to Handle Increased Flow

Task 2: Construction Document Preparation:

Consultant shall prepare 30%, 60%, and 90% design documents. Consultant shall finalize the design within the approved budget and prepare construction documents required for competitive bidding of the project. The construction documents shall include plans, details, and specifications for all proposed improvements. Consultant shall prepare a 30%, 60%, 90% and final opinion of probable cost of construction based on the final construction documents. The construction documents shall be reviewed by the County prior to public availability. The consultant shall utilize the County standard contract specification format which will be provided by the County.

Task 3: Bidding Phase Services

Consultant shall assist the County during the competitive bidding process by conducting a pre-bid meeting; preparing addenda as required to clarify documents and answer bidder questions; and tabulating and evaluating the bids.

Task 4: Construction Phase Services

As an optional task, during construction, the Consultant shall oversee construction management and inspection, attend the pre-construction meeting and regularly scheduled progress meeting; review contractor submittals; respond to Requests for Interpretations, review change order requests, submit change orders for approval, review invoice payment requests, and observe and report progress of work.

County will require Labor Compliance oversight during construction. The Consultant will provide a Labor Compliance Officer with all necessary certifications as required by the funding source.

All agreements, contracts, and project work will be conducted in compliance with all Federal, State, and local overlay requirements; including any DBE, MBE, and/or WBE program.

IV. SELECTION CRITERIA AND PROCEDURE

Upon evaluation of the Statements of Qualifications (“SOQ”), the County will determine the three firms they feel are most qualified for this project based on the following criteria:

CRITERIA	MAXIMUM POINTS
1 Understanding of the work to be performed	30
2 Experience with similar kinds of work	30
3 Quality of staff and demonstrated technical ability	25
4 Familiarity with state and federal funding agency requirements	10
5 Capability of developing innovative solutions	10
6 Financial responsibility and availability	10
7 Local preference	5
Total	120

After determining the top three ranked firms, the County may choose to conduct interviews of the top three rated firms and base their decision on both the interview and the SOQ, however the County reserves the right to make a selection based solely on the written SOQs. If the County

conducts interviews, the interviewed firms will be re-ranked afterwards. The County will negotiate the final scope of work, fee, project schedule, and contract terms with the top ranked firm.

Local Preference

The County, as it will be expending its own funds as part of this project, desires to include a local preference in the evaluation criteria related to design professionals. As part of the evaluation of their SOQ, a consultant will receive a total of five (5) points if they or their subconsultant(s) are considered to be a local business. A business is a local business within Tulare County if it:

- (1) has had a fixed office or distribution point located in and having a street address within the County for at least six (6) months immediately prior to the issuance of the request for bids by the County; and,
- (2) holds any required business license by the County or any city within the County; and,
- (3) employs at least one (1) full-time or two (2) part-time employees whose primary residence is located within the County, or if the business has no employees, shall be at least fifty percent (50%) owned by one or more persons whose primary residence is located within Tulare County.

Final Scope of Work and Cost Proposal

The top ranked consultant will attend a scoping meeting with County staff to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The County will provide the consultant with as much material as is available regarding the project. The cost proposal will be submitted by the consultant based on what is discussed at the scoping meeting. If agreement cannot be reached with the top ranked consultant, negotiations will proceed with the next most qualified consultant.

A formal notice to proceed to the selected consultant will occur immediately following the County Board of Supervisor's award of the contract to the selected consultant.

V. STATEMENT OF QUALIFICATION REQUIREMENTS

The following requirements are provided for standardizing the preparation and submission of SOQ's by all consultants. The intent is to assist consultants in the preparation of their SOQ's and to assist the County and proposal evaluation committee by providing standards for comparison of consultants' proposals and narrowing qualification requirements.

Proposals shall contain the following information in the order listed:

1. Introductory Letter (2 pages maximum)

The introductory (or transmittal) letter shall be addressed to:

Mr. Ross W. Miller, P.E.
Tulare County Resource Management Agency
5961 South Mooney Boulevard,
Visalia, CA 93277

The letter shall include the consultant's contact name, mailing address, telephone number, facsimile number, and email address.

The letter shall also indicate any conflicts or non-acceptability of the terms and conditions of the County's standard agreement, including all of the attachments to the agreement. Proposed deviations and modifications to the contract agreement shall be noted and supporting reasons provided. The County will not consider changes to the agreement once consultant selection has been completed.

The letter shall be signed by a principal of the firm authorized to legally bind the firm. Unsigned proposals or proposals signed by an individual not authorized to bind the prospective consultant will be rejected.

2. Statement of Qualifications and Experience (5 pages maximum*)

Identify consultant's Project Director, Project Manager, Project Engineer(s), subconsultants and other key staff. Describe the responsibilities of each and show the relationships on an Organizational Chart. Include resumes of key staff, previous project experience similar to the subject project (with special attention to regional projects), ability, and capacity for undertaking and performing the work. Identify the current availability of all key staff. The County must approve any changes in key staff and sub consultants after the award of contract before any change can be made.

Provide project descriptions, contact names and current telephone numbers for three (3) references of similar project experience that illustrates the quality and past performance of the project team. A maximum of two additional references may be provided for projects performed by consultant that were funded under CDBG grants within the last three (3) years.

3. Project Understanding (5 pages maximum)

Describe consultant's understanding of the project. Identify the possible and or recommended approach and procedure for accomplishing the project goals. Discuss potential hurdles and critical tasks applicable to the project. You may also describe how your team is best suited to address the key issues.

4. Proposed Scope of Work

The proposed scope of work shall address the tasks identified in this RFQ. Other tasks, items of work or services which the consultant believes are applicable to the project may also be included. The Scope of Work shall include a schedule, tied to the date of the execution of the contract with

* The resumes for key project personnel do not count towards the five page maximum.

the consultant which shows the anticipated completion times for each task. The scope of work shall be formatted in such a manner that it can be included into the County's standard contract.

Do not include any information regarding consultant fees or costs at this time.

5. Proposal Delivery

Six (6) copies of the Statement of Qualifications shall be delivered in a sealed package. Packages shall be clearly marked with the firm's name and "Traver Sewer Design – Engineering Services SOQ" shall be delivered to the County in person or by mail at the following location:

**Tulare County Resource Management Agency
5961 South Mooney Boulevard,
Visalia, CA 93277
Attn: Ross W. Miller, P.E.**

Proposals must be received at that prescribed location no later than the time described in Section VI of this RFQ. Proposals received after the time and date specified above will not be considered and will be returned unopened. Any proposal received prior to the time and date specified above may be withdrawn or modified by written request of the proposer so long as the modified proposal is received prior to the time and date specified above.

VI. SCHEDULE

Anticipated Schedule

Issue RFQ	August 21, 2015
RFQ Conference	September 3, 2015, at 4:00 PM
Written Questions Due	September 10, 2015, at 5:00 PM
Statement of Qualifications Due	September 17, 2015, at 5:00 PM
Notification of Consultant Shortlist	September 24, 2015
Consultant Interviews (at the County's Option)	October 1, 2015
Notice to Proceed	December 2015
Final Bid Documents	May 2016
Construction Bidding	June 2016 – July 2016
Construction	August 2016 – November 2016

VII. ADDITIONAL INFORMATION

CDBG Funding

The consultant must comply with all requirements of the applicable CDBG funding grant and agrees to comply with all requirements of said grants applicable to the County as well.

Financial Management and Accounting System Requirements

The consultant must have an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31. The County will not award a contract to a consultant that does not have an adequate financial management and accounting system.

Compensation under any contract resulting from this RFQ will be based on audited rates developed through a qualifying Tulare County or other government audit. Sub-consultants whose fee is expected to exceed \$250,000 will be subject to this same audit provision.

This RFQ does not commit the County to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The County reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Qualifications if it is in the best interests of the County to do so.

The prospective consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the County.

All products used or developed in the execution of any contract resulting from this RFQ will become public domain.

A sample of the proposed contract agreement is attached herein as Appendix A. The Consultant shall adhere to the provisions of this agreement. The Consultant shall advise the County, in the proposal transmittal letter, of any provision which they cannot accept.

Contract award as a result of this RFQ will be made without discrimination based on race, color, religion, age, sex, or national origin.

This RFQ and relevant project documents are available at the County of Tulare website as noted elsewhere in this RFQ.

A conference regarding this RFQ will be held at the Tulare County Resource Management Agency Main Conference Room at Tulare County Government Plaza, 5961 South Mooney Boulevard, Visalia, CA 93277-9394 on the date and time described in Section VI. This will be the only opportunity to pose oral questions regarding this RFQ. This conference is not mandatory, but attendance is strongly encouraged.

All questions relating to this RFQ, other than those posed at the conference described above, must be addressed in writing (e-mail is acceptable) to Ross W. Miller, Tulare County RMA, 5961 South Mooney Boulevard, Visalia, CA 93277-9394 or at rmiller@co.tulare.ca.us and received no later than the time specified in Section VI. Questions received after this time will not be answered. Questions and responses will be posted on the website noted elsewhere in this

RFQ. It will be the proposer's responsibility to periodically review the website for responses to questions and to review any additional information that may be provided by the County.

VIII. DISCLAIMER

A. Where funds allocated to this project are not made available, withheld, or reduced by any federal, state, regional or local government entity, the County of Tulare is under no obligation to fund this project, including, but not limited to, any agreement that may be negotiated for consulting services which is the subject of this Request for Qualifications.

B. Any consulting firm selected must, as a condition of entering into any agreement with the County, comply with any requirements imposed upon the County by any federal, state, regional or local public agency, which has agreed to provide funding for this study including, but not limited to, any agreement or amendment that may be negotiated for professional consulting services which is the subject of this Request for Qualifications.

C. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the consulting firm.

D. Selection of qualified consulting firms will be made on the basis of the proposals as submitted, although the County reserves the right to interview applicants as part of the selection process.

E. The County reserves the right to award the contract to the proposer who presents the proposal which, in the judgment of the County, best accomplishes the desired results.

F. This Request for Qualifications does not constitute an offer of employment or to contract for services.

G. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make an award, or no award, by reason of the County's judgment as to its best interests.

H. All documents submitted to the County in response to this Request for Qualifications will become the exclusive property of the County and may be returned to the proposer or kept by the County, at the sole discretion of the County.

I. All proposals shall remain firm for four (4) months, or 120 days following closing date for receipt of proposals.

J. Any contract awarded pursuant to this Request for Qualifications will incorporate the requirements and specifications contained in this Request for Qualifications. All information presented in a consulting firm's proposal will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations.

K. The selected consulting firm must be qualified to provide the requested services, able to satisfy all insurance requirements of the County, and be available to commence work according to the proposed schedule contained in this Request for Qualifications.

L. Under the provisions of the California Public Records Act (the “Act”), Government Code section 6252 et seq., all “public records” (as defined in the Act) of a local agency, such as the County, must be available for inspection and copying upon request of any person. Under the Act, the County may be obligated to provide a copy of any and all responses to this Request for Qualifications, if such requests are made after the contract is awarded. One exception to this required disclosure is information which fits within the definition of a confidential trade secret [Government Code section 6254(k)] or contains other technical, financial or other data whose public disclosure could cause injury to the proposer’s competitive position. If any consulting firm believes that information contained in its response to this Request for Qualifications should be protected from disclosure, the consulting firm **MUST** specifically identify the pages of the response that contains the information by properly marking the applicable pages and inserting the following notice in the front of its response:

NOTICE: The data on pages [__] of this response identified by an asterisk (*) contain technical or financial information, which are trade secrets, or information for which disclosure would result in substantial injury to the consulting firm’s competitive position. Proposer requests that such data be used only for evaluation of the response, but understands that the disclosure will be limited to the extent the County considers proper under law. If an agreement is entered into with the consulting firm, the County shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.

The County will not honor any attempt by a consulting firm to designate its entire proposal as proprietary. If there is any dispute, lawsuit, claim or demand as to whether information within the response to the Request for Qualifications is protected from disclosure under the Act, consulting firm shall indemnify, defend, and hold harmless, the County arising out of such dispute, lawsuit, claim or demand.

IX. NO LOCAL PREFERENCE IN CONSTRUCTION

Under the terms of the CDBG Grant, a local preference may not be included in the competitive bidding process for the award of construction contracts.

ATTACHMENT A
AGREEMENT AND ATTACHMENTS

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT, is entered into as of _____, between the COUNTY OF TULARE, referred to as "County", _____, referred to as "Consultant", incorporated within the State of California in _____, with reference to the following:

A. County has requested proposals for professional engineering consulting services for a proposed force main sewer project. These services are to include _____, to the satisfaction of the County, State, United States Department of Housing and Urban Development ("HUD"), and other jurisdictional agencies. Consultant shall document the results of the work to the satisfaction of the County, the State, HUD, and other jurisdictional agencies. This may include preparation of progress and final reports or similar evidence of attainment of the agreement objectives.

B. Consultant's response indicates that it possesses the professional qualifications, relevant experience and demonstrated competence to provide such services.

ACCORDINGLY, IT IS AGREED:

1. SERVICES. Consultant will provide professional engineering services, more particularly described in Exhibit A ("Scope of Work"). All work performed and billed to the County by the Consultant shall be grant eligible in accordance with the California Department of Housing and Community Development Grant Management Manual, unless otherwise directed by the County, in writing.

2. TIME FOR PERFORMANCE/TERM. Time is of the essence in this Agreement. The services as described in Exhibit A, will commence within five days of receipt of a written notice to proceed issued following acceptance of this Agreement by the County. The schedule is detailed in Exhibit C. This agreement shall terminate on _____. Mutually acceptable changes in the scope, character, or complexity of the work if such changes become desirable or necessary as the work progresses will be accommodated by a supplemental agreement. An appropriate extension of time may be made in the form of a supplemental agreement in case of unavoidable delays. Corresponding warranted adjustments in payment will be made based upon the incorporated rate schedule.

3. COMPENSATION.

Consultant will be compensated in the amount of \$_____ for satisfactory completion of tasks and activities as detailed in the SCOPE OF WORK.

The compensation to be provided to Consultant under this Agreement will be reduced due to any inability to provide services, whether such an inability is due to Consultant activities or other activities or circumstances beyond the control of Consultant.

County must approve budget changes in writing prior to any budget adjustment or amendment.

By the fifteenth day of the second (2nd) month of the project and thereafter, each month, Consultant shall submit monthly invoice statements stating the services provided and the actual costs of the previous month.

All invoices will be submitted to the Tulare County Resource Management Agency for approval prior to payment by the Auditor's Office. County will make payment within 30 days of receipt of approved invoices submitted in compliance with this Agreement.

Consultant shall submit to the Tulare County Resource Management Agency, monthly status reports on the progress of the project.

Within forty-five (45) days after completion of the entire project, Consultant shall provide a written report and a final invoice to County with a summary of Consultant services and work performed under this Agreement and a summary of charges as a result of this Agreement. Any claim for payment or adjusted compensation not invoiced by the Consultant by this date shall be considered waived and shall not be recompensed. Within thirty (30) days of County approval of the final invoice and report, County will endeavor to pay Consultant the remaining amount owed Consultant as supported by bills and receipts or Consultant shall repay County any overpayment paid to Consultant pursuant to this Agreement. However, in no event shall County be obligated to pay Consultant more than a total of \$_____ pursuant to this Agreement.

4. COMPLIANCE WITH LAW. Consultant will provide the services called for under this Agreement in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to Consultant's employees, Consultant will comply with all laws and regulations pertaining to wages and hours (including prevailing wage rates where applicable), state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

5. BOOKS, DOCUMENTS, PAPERS, AND RECORDS. Consultant will maintain complete and accurate books, documents, papers and records with respect to the services rendered and the costs incurred under this Agreement, including records with respect to any

payments to employees or subcontractors. All such records will be prepared in accordance with generally accepted accounting procedures, will be clearly identified, and will be kept readily accessible. Upon request, Consultant will make such records available for inspection by the County, State, HUD, the Comptroller General of the United States, other jurisdictional agency, or duly authorized representatives for the purpose of making audit, examination, excerpts, and/or transcriptions of such records during the agreement period and continuing for a period of five (5) years from the date of final payment under this Agreement. The requirements of this section shall also apply to any subconsultants or subcontractors of Consultant who perform work or receive payment in connection with this Agreement.

6. PERFORMANCE REQUIREMENTS. Consultant shall be held to the same goals, milestones, performance measurements, laws, regulations, and requirements as entered into by County in the Standard Agreement No. 14-CDBG-9892 with the State of California and outlined in the Scope of Work.

7. INDEPENDENT CONTRACTOR STATUS. Consultant will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement may be construed to constitute Consultant or any of its agents, employees or officers as employees or officers of County. Consultant agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of County. Consultant will be solely responsible for determining the means and methods of performing the specified services, and County will have no right to control or exercise any supervision over Consultant as to how the services will be performed. County will not:

- a. Withhold FICA (Social Security) from Consultant's payments.
- b. Make state or federal unemployment insurance contributions on Consultant's behalf.
- c. Withhold state or federal income tax from payments to Consultant.
- d. Make disability insurance contributions on behalf of Consultant.
- e. Obtain unemployment compensation insurance on behalf of Consultant.

Notwithstanding this independent contractor relationship, County reserves the right to monitor and evaluate the performance of Consultant for the purpose of assuring compliance with this Agreement.

8. NON-ASSIGNABILITY. Unless otherwise provided in this Agreement, County is relying on the personal skill and expertise of Consultant and no part of this Agreement may be assigned by Consultant, except that services may be subcontracted to reputable and qualified subcontractors as otherwise provided for in this agreement. Subcontracts exceeding \$25,000 in

cost shall contain all provisions of this agreement. Any substitution of subconsultants must first be approved in writing by the County's Contract Administrator.

9. INSURANCE. Prior to approval of this Agreement by County, Consultant shall file with the Resource Management Agency and shall keep in force for the full term of this Agreement the required insurance as set forth in Exhibit D attached hereto. Insurance policies shall not be used to limit Consultant's liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

10. INDEMNIFICATION: Consultant shall hold harmless, defend and indemnify County, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the willful misconduct, or the negligent acts or omissions, of Consultant or its agents, officers and employees under this agreement. This indemnification specifically includes any claims that may be made against County by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, any claims made against County alleging civil rights violations by Consultant under Government Code sections 12920 et seq. (California Fair Employment and Housing Act). The indemnification obligation shall continue beyond the term of this Agreement as to any willful misconduct, errors, omissions, or negligent acts occurring under this Agreement or any extension of this Agreement.

11. TERMINATION. The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

(a) Without Cause: County will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the Consultant the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from Consultant of any and all plans, specifications and estimates, and other documents prepared by Consultant in accordance with this Agreement. No Sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, County may terminate this Agreement based on:

- (6) material misrepresentation, either by Consultant or anyone acting on Consultant's behalf, as to any matter related in any way to County's retention of Consultant, or
- (7) other misconduct or circumstances which, in the sole discretion of the County, either impair the ability of Consultant to competently provide the services under this Agreement, or expose the County to an unreasonable risk of liability.

County will pay to the Consultant the compensation earned for work performed and not previously paid to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from Consultant of any and all reports and other documents prepared by Consultant by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the Consultant's scope of work exceeds the unpaid balance of the agreement, the Consultant must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific cause of non performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where Consultant's services have been terminated by the

County, said termination will not affect any rights of the County to recover damages against the Consultant.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of County for which Consultant's services are to be performed, may immediately suspend performance by Consultant, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by Consultant to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

12. ENTIRE AGREEMENT REPRESENTED. This Agreement represents the entire agreement between Consultant and County as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

13. HEADINGS. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

14. NOTICE. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

County:

Tulare County Resource Management Agency
Attention: Ross W. Miller, P.E.
5961 South Mooney Boulevard
Visalia, CA 93277

Fax No.: (559) 730-2653 Confirming No.: (559) 624-7000,
Email: rmiller@co.tulare.ca.us

Consultant:

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail will be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to

this paragraph. The above stated Consultant address is to be the main working office location for the duration of this agreement.

15. CONSTRUCTION. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 will not apply to address and interpret any uncertainty.

16. NO THIRD PARTY BENEFICIARIES INTENDED. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy. The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. The County warrants that they have not required the Consultant to employ or retain any company or person, or to pay or agree to pay any firm, person or organization, any fee, contribution donation or consideration of any land, contingent upon or resulting from the award or formation of this agreement.

17. JURISDICTION/VENUE. This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles.

18. WAIVERS. The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

19. EXHIBITS AND RECITALS. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

20. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY. This Agreement is subject to all applicable laws and regulations. If any provisions of this Agreement are found by any court or other legal authority, or are agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement

to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

21. FURTHER ASSURANCES. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to effect the purposes of this Agreement.

22. ASSURANCES OF NON-DISCRIMINATION. Consultant will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

23. PROFESSIONAL STANDARDS. By submitting final documents for approval by County, Consultant represents that said documents are accurate. Consultant will be responsible to County for the professional quality, adequacy, and completeness of the services, studies, and reports provided, and represents that such services, studies and reports will be suitable for the intended purposes.

Consultant will perform the services provided in this Agreement in a manner consistent with the professional skill and care ordinarily exercised by expert members of the planning, engineering, and environmental profession practicing in the State of California under similar conditions.

Where applicable and in accordance with California law, the responsible consultant/engineer shall sign and seal reports and engineering data furnished by him/her.

24. VITAL PERSONNEL. Personnel listed in Exhibit G are considered the vital personnel on the Consultant's project team. The Contract Administrator must be notified of any intended changes to the list and given an opportunity to object and to discuss any concerns or objections. Vital personnel are defined as any Consultant employee or Sub-Consultant that are authorized by Consultant to represent Consultant in dealings with the County.

25. COMPUTER SERVICES. The Consultant shall provide computer services as shown in Exhibit H.

26. PATENT RIGHTS AND COPY RIGHTS. Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall apply to this agreement. The County may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the County shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

27. OWNERSHIP OF DOCUMENTS. Tracings, plans, specifications, maps and reports prepared or obtained under the terms of this agreement shall be delivered to and become the property of the County, and that basic survey notes and sketches, charts, computations, and other data prepared or obtained under this agreement shall be made available, upon request, to the County without restriction or limitation on their use. County will indemnify and hold Consultant harmless for any reuse by County of documents produced under this agreement for any other projects without the written approval of Consultant. Final reports shall be provided to the County in hardcopy and in electronic Adobe Acrobat format. Other electronic files shall be provided in electronic format using standard software.

28. EQUIPMENT PURCHASE. Prior authorization in writing by the County's Contract Administrator shall be required before the Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

Prior to seeking authorization by the County's Contract Administrator for the purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$5,000, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Consultant may either keep the equipment and credit the County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit the County in an amount equal to the sales price. If the County elects to keep the equipment, fair market value shall be determined at the Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the County and the Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the County. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5000.00 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

29. DISPUTES. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the County's Contract Administrator and the Assistant Director – Public Works, who may consider written or verbal information submitted by the Consultant.

Not later than 30 days after completion of all work under contract, the Consultant may request review by the County Board of Supervisors of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this contract.

30. CONFIDENTIALITY OF DATA. All financial, statistical, personal, technical, or other data and information relative to the County's operations, which are designated confidential by the County and made available to the Consultant in order to carry out this contract, shall be protected by the Consultant from unauthorized use and disclosure.

Permission to disclose information on one occasion or by public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this article.

31. CONFLICT OF INTEREST. The Consultant shall disclose any financial, business, or other relationship with the County that may have an impact upon the outcome of this contract, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

The Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this article.

The Consultant hereby certifies that neither the Consultant, its employees, nor any firm affiliated with the Consultant providing services on this project will bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultants who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this agreement.

32. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. The consultant warrants that this contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion to terminate the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

33. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING. The Consultant certifies to the best of his or her knowledge and belief that:

a. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative

agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure From to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

34. AUDIT REVIEW PROCEDURES. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the County's Chief Accounting Officer.

Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Accounting Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.

Consultant and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

35. CLAIMS FILED BY CONSTRUCTION CONTRACTOR. If claims are filed by Countys's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

36. LIQUIDATED DAMAGES. The parties agree that time is of the essence regarding completion of the project pursuant to this Agreement. If the project is not completed according to the Scope of Work and the Project Timeline, delay will constitute a breach of contract by Consultant. Such breach will cause a hardship upon County and there will be extreme difficulty and uncertainty in fixing the actual damages to County at the time of such breach. "Actual damages" from Consultant's breach of project completion date include but are not limited to monetary damages, County's loss of good will or credibility with other parties County contracts with, and future loss of funding to County. The parties hereby agree to reasonable liquidated damages based on the circumstances existing at the time this Agreement is entered into. As such, if Consultant breaches the promise to complete the project in accordance with the Scope of Work and the Project Timeline, then Consultant must pay the sum of \$500 per calendar day of delayed completion to County as reasonable liquidated damages. The parties do not consider these amounts to be penalties. The parties agree that the liquidated damages set forth in this Section do not include damages sustained by County as a result of County paying excess of the cost of this Agreement when County terminates pursuant to Section 11, "TERMINATION," and finishes the scope of work. If County terminates in accordance with Section 12, "TERMINATION," and finishes the scope of work, Consultant will pay County the cost to

complete the scope of work that exceeds the cost of this Agreement, in addition to any liquidated damages for delayed project completion set forth in this section.

County will deduct liquidated damages determined by this Section from any retention or amount due to Consultant pursuant to this Agreement, and will bill Consultant for any liquidated damages in excess of retention or amounts due to Consultant. Consultant will pay County within thirty (30) days of receiving a bill for liquidated damages.

If County partially causes the delay of Consultant's completion of the project pursuant to this agreement, the liquidated damages owed by Consultant will not include days of delayed completion caused by County. The Tulare County Resource Management Agency Director may choose to grant Consultant extensions of time for the number of days of delayed completion caused by County.

Liquidated damages will not be assessed against Consultant when the delay in completion of the work is due to unforeseeable cause beyond the control and without the fault or negligence of the Consultant.

In the event this liquidated damages clause is not upheld, County may seek actual damages for delayed completion caused by Consultant. Notwithstanding the breach of project completion date addressed in this Section County may recover actual damages for any other breaches of this Agreement by Consultant.

37. FEDERAL ENVIRONMENTAL STANDARDS, ORDERS, AND REQUIREMENTS. The Consultant and the County agree that all work to be performed under this Agreement must comply with all applicable federal environmental standards, orders, or requirements, including, but not limited to, those issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

38. ENERGY EFFICIENCY. The Consultant and the County agree that all work to be performed under this Agreement must comply with any and all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

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THE Parties, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By _____
Chairman, Board of Supervisors

ATTEST: _____,
County Administrative Officer/
Clerk of the Board of Supervisors

By _____
Deputy Clerk

CONSULTANT

By _____

Title _____

By _____

Title _____

Approved as to Form
County Counsel

By _____
Deputy